

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 28 2008

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DEPUTY
SPOKANE, WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CECIL J. ROBY,

Plaintiff,

vs.

CITY OF SPOKANE, WASHINGTON,
ANNE KIRKPATRICK, DANIEL
WATERS, RONALD VAN TASSEL,
JOHN GATELY, and DANIEL
WILSON,

Defendants.

Civil Action

Case No.: **CV-08-139-JLQ**

COMPLAINT
AND JURY DEMAND

Plaintiff, Cecil J. Roby, by way of Complaint against the defendants named
herein, states and alleges as follows:

INTRODUCTION:

This is an action for damages in which Plaintiff alleges that the defendants,
individually and in conspiracy with other defendants, wrongfully, maliciously and

COMPLAINT

- 1

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ORIGINAL

1 unlawfully deprived him of his civil rights without due process of law and, in
2 violation of his right to equal protection of the law, did intentionally, recklessly,
3 and/or negligently inflict physical injury to Plaintiff, all under color of state law,
4 and thereby having caused him severe and continuing emotional, psychological
5 and physical harm as well as monetary losses. Plaintiff further alleges that
6 defendant Daniel Wilson intentionally assaulted plaintiff without justification or
7 provocation, causing sever physical injury plaintiff.
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12 JURISDICTION:

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14 1. This court has jurisdiction under 28 U.S.C. § 1331 in that this is a
15 civil action arising under the Constitution of the United States. Plaintiff also
16 asserts claims based upon state law. This court has pendant jurisdiction over those
17 claims under 28 U.S.C. § 1331. A Notice of Claim was presented to Defendant
18 City of Spokane on December 21, 2007 pursuant to Revised Code of Washington
19 4.96.020, and more than sixty days has passed since the date of presentment.
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24 2. Plaintiff's civil rights claims are predicated upon The Fourth and
25 Fourteenth Amendments to the United States Constitution and on 42 U.S.C. §
26 1983, which authorizes actions to redress the deprivation under color of state law
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1 of rights, privileges and immunities secured to plaintiff by the Constitution of the
2 United States.

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4 3. Plaintiff's claims for attorneys' fees and costs are predicated upon 42
5 U.S.C. § 1988, which authorize the award of attorneys' fees and costs to prevailing
6 parties pursuant to 42 U.S.C. § 1983.
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10 VENUE:

11 4. Venue is proper in this court under 28 U.S.C. § 1391(a) because at
12 least one of the defendants resides in the Eastern District for the State of
13 Washington and the events leading to this cause of action occurred in the Eastern
14 District for the State of Washington.
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18 PARTIES:

19 5. Plaintiff is a citizen of the United States a resident of the State of
20 Washington.
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22 6. Defendant, CITY OF SPOKANE, WASHINGTON, is a political
23 subdivision of the State of Washington.
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25 7. Defendant ANNE KIRKPATRICK is and was at all times material
26 hereto, the duly appointed and acting Chief of Police for Spokane, Washington,
27 responsible for the formulation and implementation of directives and policies
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1 relating to the conduct of Deputies and employees of the City of Spokane Police
2 Department and is named in both her individual and official capacity. All acts and
3 omissions on the part of Defendant Kirkpatrick alleged herein were performed
4 within the scope of her official duties as Chief of Police.
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7 8. Defendants DANIEL WATERS, RONALD VAN TASSEL, and
8 JOHN GATELY are and were at all times material hereto Officers of the City of
9 Spokane Police Department. All acts and/or omissions by Defendants DANIEL
10 WATERS, RONALD VAN TASSEL, and JOHN GATELY as alleged herein were
11 done within the scope of their duties as employees of the City of Spokane Police
12 Department.
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15 9. On information and belief, Defendant DANIEL WILSON is a resident
16 of Spokane County, Washington, in the Eastern District for the State of
17 Washington.
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21 **FACTS:**

22 9. On March 13, 2007, Plaintiff and his wife, Catherine Roby, were in
23 the City of Spokane in the vicinity of Division Street and Spokane Falls Boulevard.
24 Plaintiff, his wife, and several of their friends were on foot when Mrs. Roby started
25 to cross the street without first checking for oncoming traffic. Plaintiff grabbed her
26 and pulled her back to the curb for her own safety. Almost immediately after
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1 Plaintiff pulled his wife out of the street, defendant Daniel Wilson approached
2 Plaintiff unseen and began punching Plaintiff on and about his head and face. On
3 information and belief, defendant Wilson had an object in his hand, such as a small
4 bully club or a black jack. Plaintiff was taken completely by surprise and was
5 unable to defend himself. After defendant Wilson had struck Plaintiff a number of
6 times, several persons who were with Plaintiff and his wife were able to pull
7 Wilson away. The attack by defendant Wilson against Plaintiff was completely
8 unprovoked and unjustified.

12 10. As a result of the assault by defendant Wilson, Plaintiff sustained
13 severe injuries to his face and head. Shortly after the attack, Officers Gately and
14 Waters arrived on the scene. The officers observed the injuries to Plaintiff and
15 obtained statements from Plaintiff and several witnesses who saw defendant
16 Wilson attack Plaintiff. Defendant Wilson also told the officers that he had
17 attacked Plaintiff and caused the injuries to Plaintiff.

21 11. Officers Wohl and Van Tassel also arrived on scene and participated
22 in the investigation. Despite having obtained information that defendant Wilson
23 had intentionally assaulted Plaintiff and caused significant injuries to Plaintiff, the
24 officers did not arrest Wilson or file any charges against Wilson. Instead, the
25 Officers arrested Plaintiff and charged Plaintiff with domestic violence assault upon
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1 his wife based solely on statements made to them by defendant Wilson. Ms. Roby
2 denied that she had been assaulted by her husband.
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4 12. No other witnesses to the incident confirmed defendant Wilson's
5 claim that Plaintiff had assaulted his wife. On the contrary, other witnesses to the
6 incident told police that Plaintiff had not assaulted his wife and that the attack on
7 Plaintiff by defendant Wilson was entirely unprovoked.
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9 13. At the time of the incident, defendant Wilson was a firefighter
10 employed by the City of Spokane Fire Department. On information and belief, the
11 officers' failure to arrest or charge defendant Wilson and the arrest and charging of
12 Plaintiff was done as part of a de facto policy within the Spokane Police
13 Department of giving preferential treatment to firefighters employed by the City of
14 Spokane. Plaintiff was arrested and charged with domestic violence solely for the
15 purpose of protecting defendant Wilson from criminal or civil liability for the
16 assault on Plaintiff. Further, defendants Gately, Waters, and Van Tassel prepared
17 and filed sworn reports concerning the incident that contained statements that the
18 officers knew to be false. The filing of such reports containing false statements
19 was also done for the purpose of protecting defendant Wilson and to protect the
20 officers from any charges of misconduct.
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1 14. Plaintiff was taken by the police to Sacred Heart Medical Center
2 where he was treated for his injuries. Plaintiff was later taken to the Spokane
3 County Jail and booked into jail on a charge of Fourth Degree Assault – DV.
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5 15. As the result of the actions of Officers Gately, Waters, and Van
6 Tassel, Plaintiff was unlawfully deprived of his liberty and subjected to criminal
7 prosecution in violation of his civil rights.
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9 16. At all times relevant hereto, Officers Gately, Waters, and Van Tassel
10 were acting within the scope of their employment and official duties with the
11 Spokane Police Department under the supervision and direction of the Chief of
12 Police, Anne Kirkpatrick. On information and belief, at the time of the incident,
13 the Spokane Police Department had a de facto policy of not investigating, charging
14 or prosecuting crimes against City of Spokane firefighters, which policy was
15 known to person with the responsibility of formulating and implementing policies
16 and procedures within the Department.
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21 17. As a result of the de facto policies of the Spokane Police Department,
22 Plaintiff's civil rights under the Constitution of the United States to be free from
23 unlawful arrest, detention and prosecution were violated.
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25 18. As the result of the assault by defendant Wilson, Plaintiff suffered
26 severe and lasting physical injury causing extreme pain and suffering as well as
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1 emotional distress. Plaintiff also incurred damages in the form of medical
2 expenses for treatment related to his injuries.
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5 **CAUSES OF ACTION:**

6 **Violation of Civil Rights**

7 17. The conduct of the defendants, and each of them, constitutes the
8 reckless and/or intentional violation of Plaintiff's civil right not to be subject to
9 arrest without probable cause and exhibits callous disregard for Plaintiff's liberty,
10 physical safety, and emotional well-being, for which Defendants are liable to
11 Plaintiff under 42 U.S.C. § 1983.
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16 **False Arrest/Imprisonment**

17 18. The conduct of the defendants as alleged herein constitute false arrest
18 and/or imprisonment under state law in that defendants wrongly and without legal
19 justification restrained Plaintiff by use of physical force and/or the threat of
20 physical force.
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24 **Violation of Due Process**

25 19. Defendants' actions constitute arbitrary and capricious conduct in
26 violation of plaintiff's due process rights under the Constitution of the United
27 States, which conduct proximately caused injury to plaintiff.
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Failure to Adequately Train and Supervise

20. The conduct of Defendant Kirkpatrick constitutes a failure to adequately train and supervise officers of the Spokane Police Department in the performance of her duties for which Defendant Kirkpatrick is liable to Plaintiff under 42 U.S.C. § 1983 for any and all damages proximately caused by such failure to train and/or supervise.

Assault and Battery

21. The conduct of Daniel Wilson as alleged herein constitutes an unlawful assault and battery of Plaintiff without legal justification for which Defendant Wilson is liable to Plaintiff under state law for all injuries proximately caused by such assault and battery.

Respondeat Superior

22. Defendant City Spokane is liable to Plaintiff under state law for all damages proximately resulting from the acts and/or omissions by its representatives, agents, and/or employees as alleged herein that fall within the scope of such representation, agency and/or employment with the County.

PRAYER FOR RELIEF:

WHEREFORE plaintiff prays for the following relief:

For an award of special and general damages in an amount to be proved at trial;

For an award of punitive damages against each of the defendants in an amount to be determined at trial;

For reasonable costs and attorney fees incurred in bringing the present action; and

For such further legal and equitable relief as to the court appears just.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues triable by jury.

Dated this 25th day of April, 2008.


Richard D. Wall, WSBA#16581
Attorney for Plaintiff